

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

HAROLD B. WILSON, and) CASE NO. 4:12CV3061
GRACY SEDLAK,)
)
 Plaintiffs,)
)
 v.) MEMORANDUM
) AND ORDER
)
 JOSEPH FLETCHER, and)
 ORA THOMAS FLETCHER,)
)
 Defendants.)

This matter is before the court on Plaintiffs' "Motion for Personal Service" and "Motion to Strike Answer and for Default Judgment." (Filing Nos. [23](#) and [26](#).) The court will deny both Motions.

In Plaintiffs' "Motion for Personal Service," Plaintiffs ask that the summons forms issued on September 4, 2012, be served by the United States Marshal's Service. (Filing No. [23](#).) [Federal Rule of Civil Procedure 4\(c\)\(3\)](#) gives the court discretion, "[a]t the plaintiff's request," to order that service be made by a United States marshal, even when a plaintiff does not qualify to proceed in forma pauperis. [*Yates v. Baldwin*, 633 F.3d 669, 672 \(8th Cir. 2011\)](#).

Here, Plaintiffs are not proceeding in forma pauperis, and they have already requested that service be made by a United States marshal. (See Filing No. [13](#) at CM/ECF p. 1.) In addition, the court already ordered that service be made by a United States marshal. (Filing No. [20](#).) Accordingly, Plaintiffs’ “Motion for Personal Service” will be denied as moot.

In Plaintiffs' "Motion to Strike Answer and for Default Judgment," Plaintiffs ask the court to strike Defendant Ora Thomas Fletcher's Answer, and enter default judgment

against him. (Filing No. [26](#).) They argue that this defendant did not file a certificate of service with his Answer, or mail a copy of his Answer to Plaintiff Gracy Sedlak. ([Id.](#))

Plaintiffs are correct that Defendant Ora Thomas Fletcher did not attach a certificate of service to his Answer. (See Filing No. [24](#).) However, it is clear that Plaintiffs both received a copy of the Answer, as they attached a copy of it to their jointly signed Motion. (See Filing No. [26](#).) Accordingly, Plaintiffs' "Motion to Strike Answer and Motion for Default Judgment" will be denied.

IT IS THEREFORE ORDERED that:

1. Plaintiffs' "Motion for Personal Service" is denied as moot. (Filing No. [23](#)); and
2. Plaintiffs' "Motion to Strike Answer and for Default Judgment" is denied. (Filing No. [26](#)).

DATED this 13th day of November, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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